

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>VERNE R. SMITH</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>OTR EXPRESS INC.</b>	)	Docket No. 250,625
Respondent	)	
Self-Insured	)	
AND/OR	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent appealed Administrative Law Judge Julie A.N. Sample's Award dated November 5, 2001. The Board heard oral argument on May 3, 2002.

**APPEARANCES**

Claimant appeared by his attorney, Gary L. Jordan of Ottawa, Kansas. The self-insured respondent appeared by its attorney, Christopher J. McCurdy of Overland Park, Kansas. The Workers Compensation Fund appeared by its attorney, J. Paul Maurin III of Kansas City, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge determined claimant suffered personal injury arising out of and in the course of employment on August 19, 1999, when he was struck on the right side of his face by the rear door of a trailer he was unloading. The Judge further determined that as a result of the accident the claimant suffered vision loss in his right eye and began to suffer from migraine headaches. The Judge concluded that the combination of injuries rendered claimant completely and permanently incapable of engaging in any

type of substantial and gainful employment. Accordingly, claimant was awarded a permanent total disability.

The respondent argues on review that claimant did not suffer personal injury by accident arising out of and in the course of employment on August 19, 1999. In the alternative, respondent argues that if the claim is compensable the nature and extent of claimant's disability is limited to a scheduled loss of use of the right eye.

The claimant argues the Administrative Law Judge's Award of permanent total disability should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The Board finds the Administrative Law Judges' findings and conclusions of law are detailed, accurate and supported by the law and the facts contained in the record. It is not necessary to repeat those findings and conclusions of law in this Order. The Board approves those findings and conclusions of law and adopts them as its own.

Respondent argues the accident did not occur because of the lack of contusions or bruising on the claimant's face. The contemporaneous medical record of the treating ophthalmologist, Thomas Gustafarro, M.D., contains a diagnosis of contusion of the right orbit. Moreover, claimant testified he was struck in the face by the rubber gasket on the trailer door. Lastly, Thomas G. Duckett, M.D., testified the lack of bruising could have been the result of claimant's anti-coagulation not being adequately controlled by his prescribed Coumadin. The Board adopts the Administrative Law Judge's finding claimant suffered personal injury by accident arising out of and in the course of employment on August 19, 1999.

The dispositive issue is whether the incident caused the claimant's loss of vision and the onset of the debilitating migraine headaches. There was contradictory medical evidence on this factual issue.

The Board agrees with and adopts the Administrative Law Judge's analysis of the evidence and conclusion that the temporal connection between the claimant's immediate loss of vision in his right eye and the accident was not coincidental. The Board finds the testimony of Dr. Novak more persuasive and adopts his opinion that claimant's loss of vision and the onset of migraine headaches were caused by the work-related incident on August 19, 1999.

Accordingly, the Administrative Law Judge's Award is affirmed in all respects.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Julie A.N. Sample dated November 5, 2001, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2002.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Gary L. Jordan, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent  
J. Paul Maurin, III, Attorney for WCF  
Julie A.N. Sample, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director